Supreme Court, U.S.
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No. 09-611

In The
Supreme Court of the United States

KIKI IKOSSI-ANASTASIOU,

Petitioner,

v.

BOARD OF SUPERVISORS OF
THE LOUISIANA STATE UNIVERSITY,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

DEBORAH E. LAMB
Counsel of Record
THOMAS R. PEAK
TAYLOR, PORTER, BROOKS & PHILLIPS, LLP
Chase Tower South
451 Florida Street, 8th Floor
Baton Rouge, LA 70801
Tel.: (225) 387-3221
Fax.: (225) 214-0462
Email: deborah.lamb@taylorporter.com

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

I. Facts Relevant to the Petition 1

II. Procedural History 1

ARGUMENT 2

I. The Issue of What Constitutes a "Reckless Disregard" in Order to Establish a Willful Violation of the Equal Pay Act Was Not Reached by the Fifth Circuit Court of Appeals in the Proceedings Below Due to the Lack of Evidence Sufficient to Raise an Issue of Fact on This Issue 2

II. No Compelling Reasons Exist Which Would Support Review on a Writ of Certiorari 6

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

Bright v. Houston Nw. Med. Ctr. Survivor, Inc., 934 F.2d 671 (5th Cir. 1991) 4

McLaughlin v. Richland Shoe Co., 486 U.S. 128 (1988) 3

Mireles v. Frio Foods, Inc., 899 F.2d 1407 (5th Cir. 1990) 3

Reich v. Bay, Inc., 23 F.3d 110 (5th Cir. 1994) 4

Reich v. Tiller Helicopter Servs., Inc., 8 F.3d 1018 (5th Cir. 1993) 3

Singer v. City of Waco, 324 F.3d 813 (5th Cir. 2003) 4

STATUTES

29 U.S.C. § 201 *et seq.* 3

29 U.S.C. § 206(d) 3

29 U.S.C. § 255(a) 3, 5

STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

I. Facts Relevant to the Petition

Respondent, solely for purposes of this Brief, adopts by reference the facts of this case, as found by the Fifth Circuit Court of Appeals.

II. Procedural History

Ikossi filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) on a standard questionnaire form. The EEOC issued a right-to-sue letter in August 2000. Ikossi brought this suit in November 2000, alleging violations of Title VII (both discrimination and retaliation), Title IX, the Louisiana Employment Discrimination Law, and the Equal Pay Act. LSU moved for summary judgment, arguing that all claims were time-barred. The district court agreed and granted summary judgment to LSU on all claims, and Ikossi appealed. On appeal, the Fifth Circuit Court of Appeal affirmed the district court's grant of summary judgment on the majority of Petitioner's claims, including her Equal Pay Act Claim, finding that claim to be time-barred.

ARGUMENT

I. The Issue of What Constitutes a "Reckless Disregard" in Order to Establish a Willful Violation of the Equal Pay Act Was Not Reached by the Fifth Circuit Court of Appeals in the Proceedings Below Due to the Lack of Evidence Sufficient to Raise An Issue of Fact on This Issue.

Petitioner has stated that the "Question Presented" in her Petition for Writ of Certiorari is "what constitutes reckless disregard for purposes of showing a willful violation of the Equal Pay Act". In her argument, she states as follows:

> In its opinion affirming the lower court's application of the two-year prescription, the Fifth Circuit Court of Appeals stated that " . . . the facts that Ikossi was paid less than many of her male colleagues and that LSU knew she was dissatisfied with this difference are not enough to raise a fact question as to whether LSU knew or recklessly disregarded that its pay scale was prohibited by the FLSA." *Ikossi*, at 553.

(Petition for Writ of Certiorari, page 7).

What Petitioner fails to grasp is that the Fifth Circuit's conclusion and holding were entirely appropriate and correct based upon the Record and the absence of any evidence which could support a finding of willfulness (or "reckless disregard") on the part of LSU. Even in the event the Court believes the question (what constitutes "reckless disregard") to be

unanswered or unsettled at the present time, the present case is *not* an appropriate vehicle for review by this Court.

In affirming the district court's grant of summary judgment with respect to Petitioner's Equal Pay Act Claim, the Fifth Circuit held and stated, as follows:

> Ikossi's final claim arises under the Equal Pay Act,[1] which is part of the Fair Labor Standards Act (FLSA).[2] Claims under the FLSA, including Equal Pay Act claims, must be filed within two years after the cause of action accrues, or within three years if the alleged violation was "willful."[3] Ikossi argues that the three-year limitations period applies because LSU acted willfully.
>
> An employer willfully violates the FLSA if it "either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute."[4] Because willfulness is a question of fact,[5] summary judgment in favor of the employer is inappropriate if the plaintiff has introduced

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[1] 29 U.S.C. § 206(d).

[2] 29 U.S.C. § 201 *et seq.*

[3] 29 U.S.C. § 255(a).

[4] *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988).

[5] *Reich v. Tiller Helicopter Servs., Inc.*, 8 F.3d 1018, 1036 (5th Cir. 1993); see *Mireles v. Frio Foods, Inc.*, 899 F.2d 1407, 1416 (5th Cir. 1990) (applying a clearly erroneous standard of review to the district court's finding of no willfulness).

evidence sufficient to support a finding of willfulness.[6]

The only evidence Ikossi relied upon to establish willfulness before the district court was salary records for her academic department and copies of her 1995 and 1998 grievances. The salary records show that Ikossi was paid less than many of her male colleagues and that she received lower raises than many of her male colleagues. The grievances refer to Ikossi's dissatisfaction with her salary and include a request from Ikossi that her salary be adjusted upward to the level of her male colleagues. However, the facts that Ikossi was paid less than many of her male colleagues and that LSU knew she was dissatisfied with this difference are not enough to raise a fact question as to whether LSU knew or recklessly disregarded that its pay scale was prohibited by the FLSA. Ikossi has not provided evidence that LSU actually knew that the pay structure violated the FLSA, or that LSU ignored or failed to investigate Ikossi's complaints.[7]

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[6] See *Bright v. Houston Nw. Med. Ctr. Survivor, Inc.*, 934 F.2d 671, 674 (5th Cir. 1991).

[7] See *Singer v. City of Waco*, 324 F.3d 813, 821-22 (5th Cir. 2003) (upholding a jury finding of willfulness where the employer admitted that it knew its employees were being paid incorrectly and the employer's attorney advised the employer not to investigate); *Reich v. Bay, Inc.*, 23 F.3d 110, 117 (5th Cir. 1994) (upholding a district court's finding of willfulness where the employer was notified by a government representative that

(Continued on following page)

> Without more evidence, Ikossi's allegations of willfulness cannot survive the summary judgment stage.
>
> Because Ikossi has not provided evidence that LSU acted willfully, the two-year statute-of-limitations period applies. The latest date for which Ikossi argues that her Equal Pay Act claim accrued was August 1998, when she received her last sabbatical paycheck. She did not file suit until November 2000, which is beyond the two-year limitations period. Thus, her claim is barred.

As the Fifth Circuit pointed out, Petitioner failed to produce any "evidence that LSU actually knew that the pay structure violated the FLSA, or that LSU ignored or failed to investigate Ikossi's complaints. Without more evidence, Ikossi's allegations of willfulness cannot survive the summary judgment stage." The Fifth Circuit applied the two year statute of limitations period (under the Portal to Portal Act), 29 U.S.C. § 255(a), "because Ikossi has not provided evidence that LSU acted willfully". Petitioner's claim, that "the Fifth Circuit *appears* to construe this element as a blatant and knowing refusal to comply with the Equal Pay Act" (Petition for Writ of Certiorari, p. 12 emphasis added), is without merit and speculative. Petitioner's failure, or inability, to produce *any* evidence of willfulness (on the part of LSU)

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its payment practices violated the FLSA and the employer continued those practices without further investigation).

in response to the Motion for Summary Judgment filed by Respondent, LSU, effectively prevented the Fifth Circuit from even having to consider whether LSU acted willfully in the present case.

II. No Compelling Reasons Exist Which Would Support Review on a Writ of Certiorari.

The Fifth Circuit's decision in the present case does not conflict with the decision of another United States Court of Appeals on the same important matter. It has not decided an important question of federal law that has not been, but should be, settled by this Court, nor has it decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONCLUSION

There are no "compelling reasons" which would support granting the Petition for Writ of Certiorari filed by Kiki Ikossi, Ph.D., and the petition should be denied by this Court.

Respectfully submitted,

DEBORAH E. LAMB
Counsel of Record
THOMAS R. PEAK
TAYLOR, PORTER, BROOKS &
PHILLIPS, LLP
Chase Tower South
451 Florida Street, 8th Floor
Baton Rouge, LA 70801
Tel.: (225) 387-3221
Fax.: (225) 214-0462
Email:
deborah.lamb@taylorporter.com

Counsel for Respondent